



Control Number: 36991



Item Number: 11

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**PUC DOCKET NO. 36991
SOAH DOCKET NO. 473-09-5486**

**NOTICE OF VIOLATION BY
STATE TELEPHONE TEXAS
CORPORATION OF PURA § 55.015
AND P.U.C. SUBST. R. 26.412(g)(2)
RELATING TO LIFELINE
SERVICE DISCOUNTS**

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

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ORDER

This order addresses the Commission Staff-initiated notice of violation by State Telephone Texas Corporation of Section 55.015 of the Public Utility Regulatory Act¹ and P.U.C. SUBST. R. 26.412(g)(2), concerning provision of Lifeline Service discounts to ineligible customers.

The State Office of Administrative Hearings administrative law judge (SOAH ALJ) issued a proposal for decision (PFD) in this docket on October 7, 2009. On October 12, 2009, Commission Staff requested that changes be made to proposed findings of fact 2, 3, and 6.² On October 21, 2009, the SOAH ALJ filed a letter requesting that the Commission issue an order incorporating the changes suggested by Staff. The Commission adopts the PFD issued by the SOAH ALJ, including findings of fact and conclusions of law, as edited in accordance with the SOAH ALJ's letter.

I. Findings of Fact

Background

1. State Telephone Texas Corporation (Respondent) is a telecommunications provider as defined in the Public Utility Regulatory Act, TEX. UTIL. CODE ANN. (PURA) §§ 51.002(10) and 11.001 - 63.063 (Vernon 2007 and Supp. 2008).

¹ TEX. UTIL. CODE ANN. §§ 11.001-66.016 (Vernon 2007 & Supp. 2009) (PURA).

2. On July 16, 1999, Respondent was granted Service Provider Certificate of Operating Authority (SPCOA) No. 60259 in *Application of State Telephone-Texas for a Service Provider Certificate of Operating Authority*, Docket No. 20638.
3. Respondent was granted Eligible Telecommunications Company (ETC) and Eligible Telecommunications Provider (ETP) designations in *Application of State Telephone Texas Corporation for Designation as an Eligible Telecommunications Carrier and Eligible Telecommunications Provider*, Docket No. 34066 (May 14, 2007).
4. The Lifeline Service Program (Lifeline Service) provides local exchange telephone service at discounted rates to qualifying low-income customers as identified by the Low-Income Discount Administrator (LIDA). Providers of discounted Lifeline Service are subsequently reimbursed for customer discounts through monthly remittance filings with the administrator of the Texas Universal Service Fund (TUSF).
5. In November 2007, the Staff (Staff) of the Public Utility Commission of Texas (PUC or Commission) commenced an investigation into Respondent regarding Lifeline Service discounts.
6. Staff served a Notice of Violation (NOV) on Respondent on May 13, 2009. The NOV alleged that Respondent had violated PURA § 55.015 and P.U.C. SUBST. R. 26.412(g)(2) regarding Lifeline Service and recommended that: 1) Respondent cease and desist from ordering and obtaining Life-Line discounted local exchange telephone service for ineligible customers; 2) Respondent be required to make full restitution to the TUSF for the value of Lifeline Service discounts for having obtained Lifeline Service discounts for ineligible customers in the amount of \$489,381, including interest; 3) Respondent's ETC and ETP designations be revoked; and 4) based upon the factors listed in PURA § 15.023, the Commission impose an administrative penalty on Respondent in the amount of \$469,282 which

² Commission Staff's Exceptions to the Proposal for Decision at 1 (Oct. 12, 2001).

is equal to the amount of restitution due to the TUSF for ineligible Lifeline Service discounts.

7. Respondent did not respond in writing to the NOV.
8. On July 27, 2009, Staff served a Notice of Hearing on Respondent indicating that a hearing on the merits was scheduled for September 17, 2009.
9. The Notice of Hearing was served by certified mail return receipt requested to Respondent's last known address in the Commission's records and the registered agent for process for Respondent that was on file with the Secretary of State.
10. The Notice of Hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
11. The Notice of Hearing also contained the following language in at least 12-point boldface type: "Upon failure of State Telephone to appear at the hearing, the factual allegations listed in this notice will be deemed admitted as true, and the relief sought in this notice of hearing may be granted by default. The specific factual allegations included in this notice are those set forth in the Executive Director's Notice of Violation and the memorandum attached to it, both of which are attached hereto and incorporated herein for all purposes."
12. Staff filed the direct testimony of Randy Klaus, CPA on September 3, 2009, and the redacted direct testimony of Mr. Klaus on September 4, 2009.
13. On September 17, 2009, the hearing on the merits convened in this matter before Administrative Law Judge Travis Vickery at the State Office of Administrative Hearings. Staff appeared and was represented by Brennan Foley. Respondent failed to appear at the hearing. Staff moved for default, which was granted. The hearing concluded that day and the record closed on September 30, 2009.

14. The redacted direct testimony of Mr. Klaus, the Notice of Hearing, and the Affidavit of Brennan J. Foley regarding service of the Notice of Hearing on Respondent were admitted into the record as evidence.
15. Respondent has not previously violated either PURA or the Commission's rules pertaining to Lifeline Service.

Lifeline Service Violations

16. Solix, Inc. is the LIDA of the TUSF in Respondent's service area.
17. Respondent is a party to a resale interconnection agreement with AT&T Texas. Paragraph II.A.4 of Respondent's Interconnection Agreement with AT&T Texas states that resold services shall only be sold to the same class of customers to whom AT&T Texas sells such services and that Lifeline Assistance, Link Up, and other like services (*i.e.* Lifeline Services) may only be sold to similarly situated customers who are eligible for such services.
18. From September 2006 through October 2008, Respondent ordered and obtained Lifeline Service-discounted local exchange service from AT&T Texas for 178,961 customers, which is virtually all of Respondent's customers. However, 134,081 of those customers were not qualified to receive Lifeline Service discounts.

Administrative Penalties and Restitution to the TUSF

19. Respondent indicated in its ETC/ETP amended application for ETC/ETP designations, filed on May 2, 2007, that it would provide universal service by using local loop and switch ports which it would lease from AT&T Texas as unbundled network elements; that it was currently leasing local loop and switch port equipment as unbundled network elements from AT&T Texas; and that it could own or lease soft-switches or other facilities from other providers. The Commission approved Respondent's applications on May 14, 2007.
20. Respondent does not currently have, nor has it had at any time since the Commission approved its ETC and ETP applications, an interconnection

- agreement with AT&T Texas or any other carrier for the provisioning of unbundled network elements. Respondent's interconnection agreement with AT&T Texas is for resale services only.
21. Respondent is a party to an interconnection agreement with McLeodUSA for the resale of telecommunications services only.
 22. McLeodUSA is not an Incumbent Local Exchange Carrier.
 23. The receipt of the Lifeline Service discount for ineligible customers served by Respondent is a serious violation because of the duration of the violation, the large amount of money involved, and because it was based on fraudulent and unfair business practices.
 24. Respondent has realized an illicit economic gain of \$469,282, plus interest, which came at the expense of customers throughout the State of Texas. Full restitution to the TUSF for the value of Lifeline Service discounts for having obtained such discounts for ineligible customers is \$489,381, including interest.
 25. An administrative penalty is necessary to deter Respondent from committing violations in the future.
 26. Respondent has not cured the violations.
 27. Respondent failed to timely and sufficiently respond to Staff's requests for information.
 28. Respondent obtained Lifeline Service-discounted local exchange service from AT&T Texas via its resale interconnection agreement with AT&T Texas.
 29. AT&T Texas has filed for reimbursement from the TUSF administrator for those Lifeline Service discounts claimed by Respondent for its customers.
 30. The TUSF has been harmed by Respondent obtaining Lifeline Service discounts for ineligible customers from AT&T Texas.

II. Conclusions of Law

1. The Commission has jurisdiction over this proceeding pursuant to Public Utility Regulatory Act, TEX. UTIL. CODE ANN. (PURA) § 14.001, § 52.002, and § 55.015.
2. The State Office of Administrative Hearings has jurisdiction over all matters relating to the conduct of a hearing in this matter, including the preparation of a proposal for decision with findings of fact and conclusions of law. PURA § 14.053; TEX. GOV'T CODE ANN. Ch. 2003.
3. Respondent was provided notice of Staff's investigation into this matter, the results of the investigation, information about its right to a hearing, and an opportunity to explain its activities.
4. Respondent was provided with adequate notice of the hearing pursuant to P.U.C. PROC. R. 22.183(b) and TEX. GOV'T CODE § 2001.052.
5. This proceeding may be resolved on a default basis pursuant to P.U.C. PROC. R. 22.183(a) and TEX. GOV'T CODE § 2001.056(4).
6. The allegations outlined in Staff's Notice of Hearing, the Executive Director's NOV and attached memorandum, and as incorporated into this Proposal for Decision, are deemed to be true.
7. Respondent does not own any telecommunications facilities as defined by 47 C.F.R. § 54.201(e) and (f).
8. P.U.C. SUBST. R. 26.418(c) allows a common carrier to be granted an ETC designation and to be eligible to receive federal universal service support only if it uses either its own facilities or a combination of its own facilities and resale of another carrier's services.
9. 47 C.F.R. § 54.201(i) prohibits a common carrier from obtaining an ETC designation if the carrier offers services supported by federal universal support mechanisms exclusively through resale of another carrier's services.
10. P.U.C. SUBST. R. 26.417(c)(1)(a) allows a telecommunications provider to be granted an ETP designation only if has been designated an ETC.

11. 47 C.F.R. § 54.201(b) delegates the authority to state commissions to grant ETC designations.
12. The Federal Communications Commission has determined that state commissions possess the authority to rescind ETC designations for failure of an ETC-designated carrier to comply with the requirements of Section 214(e) of the Telecommunications Act or any other conditions imposed by the state.
13. PURA § 55.015 establishes customer eligibility criteria for Lifeline Service and requires certificated providers of local exchange service to provide access to Lifeline Service.
14. P.U.C. SUBST. R. 26.412(g)(2) requires a Lifeline provider to only provide Lifeline Service to eligible customers as identified by the LIDA in its area.
15. Respondent has violated PURA § 55.015 and P.U.C. SUBST. R. 26.412(g)(2) by ordering and receiving Lifeline-discounted local exchange service for customers who are ineligible for Lifeline Service discounts.
16. The assessment of an administrative penalty on Respondent for violating PURA § 55.015 and P.U.C. SUBST. R. 26.412(g)(2) for ordering and receiving Lifeline-discounted local exchange service for customers who are ineligible for Lifeline Service discounts is reasonable.
17. The Commission has the authority to revoke a telecommunications carrier's ETC and ETP designations.
18. Respondent is in violation of its ETC and ETP status by not using its own facilities or a combination of its own facilities and the resale of another carrier's services in providing Lifeline-discounted local exchange service.
19. The revocation of Respondent's ETC and ETP designations is reasonable.
20. Restitution by Respondent to the TUSF is reasonable.

III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following order:

1. Respondent shall cease and desist from ordering and obtaining Lifeline-discounted local exchange telephone service for customers who are ineligible for Lifeline Service discounts.
2. Respondent shall make full restitution to the TUSF within 30 days after the date this Order is signed in the amount of \$489,381, which includes interest at the customer deposit interest rate as determined by the Commission for the period of time between September 2006 and October 2008. Payment shall be made by check payable to:

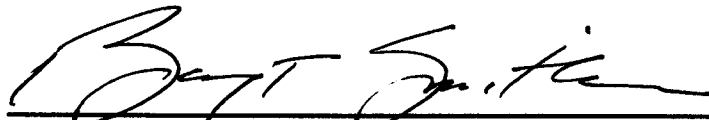
Texas Universal Service Fund
Department 1033
PO Box 121033
Dallas, TX 75312-1033
3. Respondent shall pay an administrative penalty to the Commission within 30 days after the date that this Order is signed in the amount of \$469,282. Payment shall be made by check payable to the Public Utility Commission of Texas and shall reference Docket No. 36991. The check shall be sent to the following address:

Public Utility Commission of Texas
P.O. Box 13326
Austin, TX 78711
ATTN: Fiscal Services
4. Respondent shall file an affidavit of payment in this docket no later than five days after payments are made to the TUSF and the Commission pursuant to Ordering Paragraphs 2 and 3.
5. Respondent's ETC and ETP designations are revoked effective the date this Order is signed.
6. The Commission shall not be constrained in any manner from requiring additional action or penalties for violations that are not raised here.

7. All other motions, requests for specific findings of fact and conclusions of law, and any other request for general or specific relief, if not expressly granted herein, are denied.

SIGNED AT AUSTIN, TEXAS the 12th day of November, 2009

PUBLIC UTILITY COMMISSION OF TEXAS



BARRY T. SMITHERMAN, CHAIRMAN



DONNA L. NELSON, COMMISSIONER



KENNETH W. ANDERSON, JR., COMMISSIONER